TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~288~~. 113

J. P. GIRAUD FOSTER AND JAMES THOMSON, GARNISHEES, APPELLANTS,

vs.

JOHN N. CUSHING AND WILLIAM CUSHING, IN THEIR OWN RIGHT AND AS EXECUTORS OF NICHOLAS JOHNSON, DECEASED; MARY A. JOHNSON, EXECUTRIX OF HENRY JOHNSON, DECEASED; KETURAH M. PRITCHARD, ADMINISTRATRIX OF THOMAS PRITCHARD, JR., DECEASED; AND ELIZABETH H. PRITCHARD, EXECUTRIX OF WILLIAM PRITCHARD, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 20, 1879.



SUPREME COURT OF THE UNITED STATES.

No. 388.

J. P. GIRAUD FOSTER AND JAMES THOMSON, GARNISHEES, APPELLANTS,

vs.

JOHN N. CUSHING AND WILLIAM CUSHING, IN THEIR OWN RIGHT AND AS EXECUTORS OF NICHOLAS JOHNSON, DECEASED; MARY A. JOHNSON, EXECUTRIX OF HENRY JOHNSON, DECEASED; KETURAH M. PRITCHARD, ADMINISTRATRIX OF THOMAS PRITCHARD, JR., DECEASED; AND ELIZABETH H. PRITCHARD, EXECUTRIX OF WILLIAM PRITCHARD, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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259 District court of the United States for the southern district of New York. In admiralty.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the sixth day of May, 1873.

Whereas a libel was filed on the sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-eight
260 by John N. Cushing and William Cushing against John Laird, the younger, for the reasons and causes in the said libel mentioned, and whereas afterwards, and on the twenty-ninth day of September aforesaid under leave of the court, said libel was amended; and whereas afterwards, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-nine, by order of the court a re-amended libel was filed by John N. Cushing and William Cushing in their own right and as executors of Nicholas Johnson, deceased, Mary A. Johnson, executrix of Henry Johnson, deceased, Keturah M. Pritchard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased, against the said John Laird, the younger, for the reasons and causes in the said re-amended libel mentioned; and whereas under the processes issued in pursuance of the prayers of the said original, amended, and re-amended libels, the marshal has attached, in the hands of Foster & Thomson as garnishees, the sum of thirty-one thousand four hundred and forty-one dollars and sixty-two cents, being the proceeds of the steamer Wren, the said Foster & Thompson claiming the said sum not to be the property of the said John Laird, the younger; and whereas by an order of this court duly made and entered on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and seventy-three, the said moneys were adjudged to be the property of and to belong to John Laird, the younger, the respondent above named; and whereas by an order of this court duly made and entered on the twenty-sixth day of April last aforesaid, the said Foster & Thomson, garnishees aforesaid, were directed forthwith to pay into this court the aforesaid sum of thirty-one thousand four hundred and forty-one dollars and sixty-two cents, the amount of money so decided to be in their hands belonging to the respondent in this suit, or to give stipulation with sufficient surety according to the course and practice of this court in admiralty causes, to abide the further order or decree of this court in relation thereto; as appears from said original, amended, and re-amended libels, said several processes and returns thereto, and said several orders now on file in said court and the parties hereto
261 hereby consenting and agreeing that in case of default or contumacy on the part of the said Foster & Thomson, garnishees, or their sureties, execution for the above amount may issue against their goods, chattels, and lands.

Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to the said Foster & Thomson, garnishees as aforesaid, or their proctor, abide by and pay the sum of thirty-one thousand four hundred and forty-one $\frac{62}{100}$ dollars, the money so claimed to have been

attached, or so much thereof as ordered by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

FOSTER & THOMSON.
J. P. GIRAUD FOSTER.
JAMES THOMSON.
GAM'L G. SMITH.
A. A. THOMSON.

Taken and acknowledged before me this 5th day of May, 1873.

EDWARD L. OWEN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Gamaliel G. Smith and Alexander A. Thomson, parties to the above stipulation, being duly sworn, depose and say, and each for himself says, that he is worth the sum of sixty-five thousand dollars over and above all his just debts and liabilities.

GAM'L G. SMITH.
A. A. THOMSON.

Sworn to before me this 5th day of May, 1873.

EDWARD L. OWEN,
U. S. Commissioner.

The foregoing stipulation is approved May 6th, 1873.

SAM'L BLATCHFORD,
District Judge.

262 (Endorsed:) 22–229–305. U. S. district court, southern district of New York. John N. Cushing et al. vs. John Laird, the younger. Stipulation in lieu of garnishees paying funds into court. Foster & Thomson, garnishees, in person.

Approved:

J. L. WARD,
Proctor for Libellants.

Filed May 6th, 1873.

U. S. district court.

JOHN N. CUSHING ET AL.
vs.
JOHN LAIRD, THE YOUNGER.

GENTLEMEN: Please to take notice that Foster & Thomson, the garnishees in the above-entitled cause, hereby appeal to the next circuit court of the United States within and for the southern district of New York, second circuit, from the final decree of this court, entered on the 26th day of April, 1873, adjudging and decreeing that they, the garnishees, had in their hands at the time of the levy of the attachments herein credits and effects of the said John Laird, the younger, proceeds of the steamer Wren, and from each and every of the several orders made herein in regard to the jurisdiction of this court, and otherwise as against the said garnishees.

Dated New York, May 6th, 1873.

Yours, &c.,

FOSTER & THOMSON,
Proctors and Garnishees, in Person.

To GEO. F. BETTS, Esq., *Clerk.*
J. LANGDON WARD Esq.,
Proc. for Libellants.

263 (Endorsed:) 22-299-306. District court of the U. S. for the southern district of New York, second circuit. John N. Cushing, et al. vs. John Laird, the younger. Notice of appeal of Foster & Thomson, garnishees. Foster & Thomson, proctors. Filed May 6th, 1873.

Circuit court of the United States for the southern district of New York, second circuit.

JOHN N. CUSHING, WILLIAM CUSHING, MARY A. Johnson, executrix of Henry Johnson, deceased; Keturah M. Prichard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased,
vs.
JOHN LAIRD, THE YOUNGER.

To the honorable the circuit court of the United States for the southern district of New York:

The petition of appeal of Foster & Thomson, garnishees in the above-entitled action, respectfully showeth:

That on or about the 16th day of September, 1868, John N. Cushing and Willliam Cushing, two of the above-named libellants, filed their libel in the district court of the United States for the southern district of New York against John Laird, the younger, in a cause of spoliation and damages, in which it is alleged, and praying, among other things as therein contained, that a warrant of arrest might issue against the respondent, and that if he could not be found then that his goods and chattels, or if none could be found then his credits and effects in the hands of these appellants as garnishees should be attached, to which said libel these appellants pray leave to refer for its contents.

That thereafter, and on or about the 29th day of September, 1868, the said libellants filed an amended libel herein, alleging as
264 therein contained, and for the contents of which these appellants pray leave to refer; that again, and on or about the 17th day of May, 1869, they filed a further amended libel, in which said libel the said Mary A. Johnson, executrix of Henry Johnson, deceased, Keturah M. Prichard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased, were made parties colibellants, alleging and praying as therein contained, for the contents of which last-mentioned amended libel these appellants pray leave to refer.

That the marshal to whom the attachment prayed for was delivered having returned thereon that he had attached, or claimed to have attached, certain credits in the hands of these appellants; thereupon, afterwards, and on or about the 21st of December, 1869, a motion was made and heard on the part of these appellants before the honorable Samuel Blatchford, judge of said district court, in which, among other things, it was insisted by these appellants that the said district court had not jurisdiction to issue the foreign attachment, as in this case had been issued, and said judge, having advised thereon, did, on or about the 2d day of April, 1870, make an order bearing that date, wherein and whereby, among other things, he adjudged that this court had jurisdiction to issue such attachment, as by the said order, and the proceedings on said motion will, on reference thereto, more fully appear, and to which, for the contents, these appellants pray leave to refer.

That afterwards, and on or about the 12th day of April, 1872, these appellants, as such garnishees, filed their answer herein, alleging, among other things as therein contained, and insisting that said funds and credits in their hands did not at the time of the service of the attachment upon them belong to the said John Laird, the younger, respondent herein, and praying that said district court would pronounce accordingly, as will more fully appear on reference to said answer, and to which, for the contents, these appellants pray leave to refer.

265 That afterwards, and on or about the 6th, 7th, and 8th days of November, 1872, the said cause came on to be tried and heard before the honorable Samuel Blatchford, judge of the said district court, upon the allegations and proofs adduced by the respective parties upon the issue raised by these appellants in their said answer, and said judge having advised thereon, did, on or about the 26th day of April, 1873, make a decree bearing that date, that these appellants had in their hands, at the time of the levy of the attachment herein, credits and effects of the said John Laird, the younger, respondent herein, the proceeds of the steamer Wren, amounting to the sum of thirty-one thousand four hundred and forty-one and sixty-two one-hundredths dollars; and a further order, bearing date the same day, that these appellants do forthwith pay the same into the district court, or give stipulation, with sufficient surety, to abide the further order or decree of said district court in relation thereto, as by reference to said decree and said order will more fully appear, and for the contents of which these appellants pray leave to refer.

And these appellants, for these and for other reasons, appeal from the whole of said final decree, and from each and every of the several orders made herein in regard to the jurisdiction of this court, and otherwise against them, to the next circuit court to be held in the said district, and on the said appeal they intend to seek a new decision on the facts on the proceedings and proofs in the district court, and other proofs to be adduced in the circuit court, and to pray different relief.

And they pray that the said final decree, and every part thereof, and each and every of the several orders made herein in regard to the jurisdiction of this court, and otherwise, as against these appellants, may be reversed with costs, or that such other decree be thereupon made as the said circuit court shall deem just, and the said appellees be condemned to pay to these appellants their costs and damages in the premises.

And these appellants will ever pray, &c.

266 Dated New York, May 6th, 1873.

FOSTER & THOMSON,
Proctors and Garnishees, in Person.

(Endorsed:) 22-299-306. Circuit court of the U. S. for the southern district of New York, second circuit. John N. Cushing et al. vs. John Laird, the younger. Petition of appeal of Foster & Thomson, garnishees. Foster & Thomson, proctors.

Due service of a copy of the within petition of appeal admitted this day.

New York, May 12, 1873.

J. LANGDON WARD,
Proctor for Libellants.

Filed May 12, 1873.

Know all men by these presents that we, J. P. Giraud Foster and James Thomson, composing the firm of Foster & Thomson, of the city of New York, are held and firmly bound unto John N. Cushing and William Cushing in their own right, and as executors of Nicholas Johnson, deceased; Mary A. Johnson, executrix of Henry Johnson, deceased; Keturah M. Pritchard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased, in the sum of five hundred dollars, to be paid to the said John N. Cushing and William Cushing in their own right, and as executors of Nicholas Johnson, deceased; Mary A. Johnson, executrix of Henry Johnson, deceased; Keturah M. Pritchard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased, their executors, administrators, or assigns; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the ninth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

267 Whereas, Foster & Thomson, garnishees, as appellants have appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the 26th day of April, 1873, and from each and every of the several orders, made herein in regard to the jurisdiction of this court and otherwise against them, in a suit in which John N. Cushing and William Cushing in their own right, and as executors of Nicholas Johnson, deceased, Mary A. Johnson, executrix of Henry Johnson, deceased; Keturah M. Pritchard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased, are libellants, against John Laird, the younger.

Now, therefore, the condition of this obligation is such, that if the above-named appellants, Foster & Thomson, shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against them as such appellants therein if they shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

J. P. GIRAUD FOSTER.
JAMES THOMSON.
FOSTER & THOMSON.

Sealed and delivered and taken and acknowledged this 9th day of May, 1873, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

J. P. Giraud Foster and James Thomson, being duly sworn, each for himself says, that he resides in the southern district of New
268 York, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

J. P. GIRAUD FOSTER.
JAMES THOMSON.

Sworn to this ninth day of May, A. D. 1873, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

The foregoing bond is approved as to form and amount and sufficiency of sureties.

May 12, 1873.

SAM'L BLATCHFORD,
District Judge.

(Endorsed:) 22–299–306. U. S. circuit court for the southern district of N. Y., in the 2d circuit. J. P. Giraud Foster and James Thomson to John N. Cushing and others. Bond for damages and costs on appeal. Foster & Thomson, proctors and garnishees in person.

Approved:

J. LANGDON WARD,
Proctor for Libellants.

Filed May 12th, 1873.

(Pages 269 to 549, inclusive, being duplicate of matter contained in the record in case of Cushing et al. vs. Laird, the younger, Foster & Thomson, garnishees, No. 197, Oct. t. 1881, are not reprinted.)

550 U. S. circuit court for the southern district of New York.

JOHN N. CUSHING ET AL.
vs.
JOHN LAIRD, THE YOUNGER.

The garnishees, J. P. Giraud Foster and James Thomson, come into court and apply for leave, which is granted, to amend their answer by setting up the following further and additional ground of defence, viz:

The said garnishees confirming and reiterating all the grounds of defence heretofore made and set up, and as they now stand in the cause, allege, as a further and additional ground of defence, that as they are informed and believe the libellants herein, in or about the month of November, 1874, presented to the court of Alabama claims for adjudication and payment, their claims and demands for the same alleged causes of action set up in the libel herein, and that such proceedings were thereupon had in said court that thereafter the said claims were allowed, and judgment given therefor, and that thereafter the
551 same were paid from the moneys received therefor from the British Government, and such payments were accepted by the said libellants in full settlement and discharge of said claims; and also, that said presentation, adjudication, payment, and settlement of said claims came under the provisions of the treay of Washington, of May 8th, 1871, between the Queen of Great Britain and Ireland and the United States of America;

And also, in addition, for a further ground of defence, allege that the assumption and provision made pursuant to the award of the arbitrators by the British Government for the payment of said claim, by the operation of the provision in that behalf of the treaty between the United States and Great Britain, effected a settlement and extinguishment of said claims made by the libellants as against the British Government or any of its subjects, by which the libellants are barred from the prosecution thereof.

FOSTER & THOMSON,
Garnishees.

FOSTER & THOMSON,
Proctors pro. per.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

On this 25th day of October, 1877, before me, personally came James Thomson, the above named, and made oath that he is one
552 of the firm of Foster & Thomson, the garnishees, and that the allegations to the above, by him subscribed, are true, as he is informed and believes.

JAMES THOMSON.

Subscribed & sworn to before me the 25th day of October, 1877.

JOHN A. SHIELDS,
U. S. Com'r.

553 (Indorsed:) U. S. circuit court. John N. Cushing & others vs. John Laird, the younger. Copy amendment to answer of garnishees. Foster & Thomson, garnishees.

(Endorsed:) "Amendment allowed subject to final decision." Oct. 25, 1877.

A. S. J.

Marked for identification: U. S. C. C., Oct. 26, 1877, J. I. D., cl'k of U. S. circuit court. & Filed Oct. 26, 1877. John I. Davenport, clerk.

554 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the 27th day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States.

JOHN N. CUSHING ET AL.
vs.
JOHN LAIRD, THE YOUNGER.

The above-entitled cause coming on to be heard on appeal from the decree of the district court, R. D. Benedict, of counsel for libellants' appellees, reads from the apostles testimony on the part of said libellants' appellees. C. Van Santvoord, of counsel for appellants, reads from the apostles testimony on the part of said appellants.

Mr. Van Santvoord moves to amend the answer herein.

After hearing counsel for the respective parties herein, it is ordered that the motion by the appellants to amend their answer, made Oct. 25, 1877, stand for hearing in the same manner it did before Judge Johnson, at the time of his death, and that the testimony under the amendment be received, subject to the final determination of the motion.

(Pages 555 to 692, inclusive, being duplicate of matter contained in the record in case of Cushing et al. vs. Laird, the younger; Foster & Thomson, garnishees; No. 197; Oct. t., 1881, are not reprinted.)

693 United States circuit court, southern district of New York.

JOHN N. CUSHING AND WILLIAM CUSHING IN their own right and as executrix of Nicholas Johnson, deceased, Mary A. Johnson, executrix of Henry Johnson, deceased, Keturah M. Pritchard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased,

against

JOHN LAIRD, THE YOUNGER.

Please to take notice that J. P. Giraud Foster and James Thomson, sought to be charged in the libel as garnishees herein, claim an appeal, and hereby appeal to the Supreme Court of the United States from so much of the judgment and decree of the circuit court in the above-entitled cause, dated the twelfth day of October, 1878, and filed and entered in the office of the clerk of the circuit court of the United States for the southern district of New York, second circuit, on
694 the 28th day of January, 1879, as orders, adjudges, and decrees that the decree or order of the district court of April 26, 1873, adjudging that the proceeds of the steamer Wren, in the hands of the garnishees, belonged to Laird, is not a final decree from which an appeal could be taken to the circuit court; and that the appeal of said garnishees, their first in order of time in said cause, taken by them from said decree of April 26th, 1873, be, and the same is hereby, dismissed, and that the libellants and appellees recover from the said garnishees, J. P. Giraud Foster and James Thomson, their costs on said appeal to the circuit court to be taxed, and as taxed amounting to the sum of one hundred and thirty-three dollars and sixty cents ($133.60); and that said libellants have execution therefor, unless an appeal be taken from this provision of the decree after the entry thereof within the time limited by law and the rules and practice of the court so as to operate as a supersedeas.

FOSTER & THOMSON,
Garnishees in pro. per.

To JOHN I. DAVENPORT, Esq.,
Clerk U. S. Circuit Court.

J. LANGDON WARD, Esq.,
Proctor for Libellants.

695 (Endorsed:) U. S. circuit court. John N. Cushing et al. vs. John Laird, the younger. Notice of appeal. Foster & Thomson, garnishees in pro. per. U. S. circuit court. Filed Feb. 6, 1879. John I. Davenport, clerk.

696 United States circuit court, southern district of New York, second circuit.

JOHN N. CUSHING AND WILLIAM CUSHING IN their own right and as executors of Nicholas Johnson, deceased, and Mary A. Johnson, executrix of Henry Johnson, deceased, Keturah M. Pritchard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased,

against

JOHN LAIRD, THE YOUNGER.

To the honorable the Supreme Court of the United States:

The appeal of J. P. Giraud Foster and James Thomson, sought to be charged as garnishees in the libel herein, respectfully showeth:

That this was an action in personam by John N. Cushing and
697 others, of Newburyport, Massachusetts, commenced in the United States district court for the southern district of New York, against John Laird, the younger, of Birkenhead, in the Kingdom of England, ship-builder, in a cause of spoliation and damage, civil and maritime, so called.

The libel and amended libels are for the recovery, on grounds alleged therein, of damages alleged to have been sustained by the libellants as owner of the ship Sonora, a duly registered American ship, from her destruction, on the 26th December, 1863, in the straits of Malacca, while on a voyage from Hong-Kong, China, bound to Akyab in British India, by the armed vessel called the Alabama, commanded by the Confederate States commander, Captain Raphael Semmes.

Pursuant to the prayer of the libels, processes in personam, with clause of foreign attachment, were issued against the said John Laird, the younger, requiring him to appear and answer on oath the libel, and if he could not be found that his goods and chattels, and
698 if none be found that his credits and effects, in the hands of Foster & Thomson (known as the proceeds of the steamship Wren, or otherwise), garnishees, be attached to the amount sued for and costs.

Laird not being found nor any goods or chattels of his, copies of the attachments were served on these appellants, as garnishees, to attach the proceeds of the steamship Wren in their hands, alleged or assumed in the libels to be the credits and effects of John Laird, the younger.

Laird never appeared.

After motions to discharge the attachments had been denied, these appellants, cited as garnishees, appeared and controverted, by answer, and also by answer on oath to special interrogatories propounded to them, the claim that the proceeds of the Wren in their hands were the credits or effects of John Laird, and disclosed an adverse claim to the proceeds of the Wren in their hands by Charles K. Prioleau, of Liverpool, England, as the owner for whom said proceeds were held by these
699 appellants as his attorneys.

That afterwards and on or about the 6th, 7th, and 8th days of November, 1872, the said cause came on to be tried and heard before the Hon. Samuel Blatchford, judge of the said district court, upon the allegations and proofs adduced by the respective parties upon the issue raised by these appellants in their said answer, and said judge did, on

or about the 26th day of April, 1873, make a decree, bearing that date, that these appellants had in their hands, at the time of the levy of the attachment herein, credits and effects of the said John Laird, the younger, respondent herein, the proceeds of the steamer Wren, amounting to the sum of $31,441.62, and simultaneously therewith a further order, bearing date the same day, that these appellants do forthwith pay the same into the district court or give stipulation, with sufficient surety, to abide the further order or decree of said district court in relation thereto, as by reference to said decree and said order
700 will more fully appear, and for the contents of which these appellants pray leave to refer.

That these appellants appealed from the whole of said decree, and from each and every of the several orders made therein in regard to the jurisdiction of the said district court, and otherwise against them, to the next circuit court to be held in the said district, and stating, in their petition of appeal on the said appeal, that they intended to seek a new decision on the facts, on the proceedings and proofs in the district court, and other proofs to be adduced in the circuit court, and to pray different relief.

And they prayed that the said decree, and every part thereof, and each and every of the several orders made herein in regard to the jurisdiction of the said district court, and otherwise, as against these
701 appellants might be reversed with costs, or that such other decree be thereupon made as the said circuit court should deem just, and the said appellees be condemned to pay to these appellants their costs and damages in the premises.

That afterwards and on or about the 29th day of April, 1873, the said John Laird, the younger, respondent, not having appeared in said action, a judgment by default was entered against him, nunc pro tunc, as of the 26th day of April, 1870, wherein and whereby, among other things, it was adjudged that the libellants recover in said action against the said John Laird, the younger, respondent herein, all damages by them sustained by reason of the causes in the libel mentioned, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages, and to report thereon to that court, by reference to said decretal order will more fully appear.

702 That after proceeding with such reference before John A. Osborn, esq., one of said commissioners, he made his report to said court, bearing date the 6th day of August, 1873, upon which said report, no exceptions having been filed thereto, a final decree was made and entered herein, bearing date the 19th day of September, 1873, whereby, after decreeing that said libellants do recover of the respondent their damages and costs, amounting to $143,749.16;

It was further ordered that they have execution against the property of said respondent to satisfy said decree, and especially against his property, credits, and effects in the hands of these appallants as garnishees.

That these appellants appealed from the whole of said final decree, and from the decree made herein in regard to the ownership of John Laird, the younger, in and to the property, credits, and effects in
703 the hands of these appellants, as garnishees, and also from each and every of the several orders and decrees made herein, in regard to the jurisdiction of the said district court and otherwise, against them, to the next circuit court to be held in the said district, and stated in their petition of appeal that they intended to seek a new decision on the facts, on the proceedings and proofs in the district court, and proofs to be adduced in the circuit court, and to pray different relief.

And prayed that the said final decree, and said decree made herein in regard to the ownership of John Laird, the younger, in and to the property, credits, and effects in the hands of these appellants, as garnishees, and also each and every of the several orders and decrees made herein in regard to the jurisdiction of the said district court, and otherwise as against these appellants, might be reversed with costs;
704 or that such other decree be thereupon made as the said circuit court should deem just, and the said appellees be condemned to pay to these appellants their costs and charges in the premises.

That the said two appeals coming up upon the same pleadings, proofs, proceedings, and rulings, and depending upon the same questions, except the question of finality of the decree appealed from, and a separate motion having been made by the libellants to dismiss the appeal on the coming on of each appeal to be heard at the same term of the circuit court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, in May, 1878, before the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, duly assigned to hold said circuit court, and the decisions of said motions, after
705 hearing the counsel of the respective parties, having been reserved until the final disposition of the cause in said court, and the cause having been heard before the said Chief Justice on each of said appeals on the same pleadings, proofs, and proceedings at said term, it was, among other things, considered, ordered, and adjudged by the said court that the decree or order of April 26, 1873, adjudging that the proceeds of the steamer Wren, in the hands of the garnishees, belonging to Laird, was interlocutory only; that it settled the title to the fund for the purposes of the suit, but did not adjudge that it be paid to the libellants, and that no actual appropriation of the funds was made by the said district court until the decree of September 19th, 1873, and that this last is the final decree, from which only an
706 appeal could be taken to the circuit court; and it was thereby ordered and adjudged that the appeal of said garnishees, their first *first* in order of time in said cause, taken by them from said decree of April 26th, 1873, be, and the same was thereby, dismissed; and that the libellants and appellees recover from the garnishees, J. P. Giraud Foster and James Thomson, their costs on said appeal to the circuit court to be taxed, and as taxed amounting to the sum of $133.60; and that said libellants have execution therefor unless an appeal be taken from this provision of the said decree after the entry thereof, within the time limited by law and the rules and practice of the court, so as to operate as a supersedeas.

That said decree was dated on the 12th day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and
707 filed and entered in the office of the clerk of the circuit court of the United States, in the southern district of New York, in the second circuit, on the 28th day of January, one thousand eight hundred and seventy-nine.

That these appellants are advised that the decree of 26th April, 1873, may or might be held to be a final decree in the sense of the act of the 24th September, 1789, sec. 22, and the act of March 3d, 1853, sec. 2, from which, as well as the said decree of 19th September, 1873, an appeal could be taken, and that these appellants might be prejudiced if not following up their appeal from said decree of 26th April, 1873.

And these appellants, for these and for other reasons, appeal from so much of the judgment and decree of said circuit court as orders, ad-

judges, and decrees that the decree or order of the district court
708 of April 26th, 1873, adjudging that the proceeds of the steamer Wren in the hands of gthe arnishees belonged to Laird, is not a final decree from which an appeal could be taken to the circuit court, and that the appeal of said garnishees, their first in order of time in said cause, taken by them from said decree of April 26th, 1873, be dismissed, and that the libellants and appellees recover from the said garnishees, J. P. Giraud Foster and James Thomson, their costs of said appeal to the circuit court to be taxed, and as taxed amounting to $133.60, and that said libellants have execution therefor, unless an appeal be taken from this provision of the decree after the entry thereof, within the time limited by law and the rules and practice of the court, so as to operate as a supersedeas.

And these appellants respectfully pray that the said order, judgment, and decree of the said circuit court, and the said libel
709 and amended libles, and proceedings therein, and the answer of these libellants, the depositions, evidence, orders, the decrees of the United States district court, and the decree in the United States circuit court, and the proceedings in the said cause, and the whole record in the said cause, may be sent to the said Supreme Court of the United States without delay, and that the said Supreme Court of the United States will proceed to hear the cause on their said appeal, and that the said order, judgment, and decree of the said circuit court, as to the matters and in the respects aforesaid herein appealed from, may be reversed, and that such further or other decree may be made in the said cause as to the said Supreme Court shall seem just.

Dated New York, February 6th, 1879.

FOSTER & THOMSON,
Garnishees, in pro. per.

710 The foregoing appeal allowed, bond approved, and citation signed this 6th day of February, 1879.

SAM'L BLATCHFORD,
Circuit Judge.

(Endorsed:) U. S. circuit court. John N. Cushing et al. vs. John Laird the younger. Petition of appeal. Foster & Thomson, garnishees in pro. per. U. S. circuit court. Filed Feb. 6, 1879. John I. Davenport, clerk.

711 United States *supreme* court, southern district of New York, second circuit.

JOHN N. CUSHING AND WILLIAM CUSHING in their own right and as executrix of Nicholas Johnson, deceased; Mary A. Johnson, executrix of Henry Johnson, deceased; Keturah M. Pritchard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased,

against

JOHN LAIRD, THE YOUNGER.

Know all men by these presents, that we, J. P. Giraud Foster, James Thomson, David Thomson, all of the city of New York, and

Allan L. Purves, of Brooklyn, in the State of New York, are held and firmly bound unto John N. Cushing and William Cushing in their own right and as executrix of Nicholas Johnson, deceased; Mary A. Johnson, executrix of Henry Johnson, deceased; Keturah M. Pritch-
712 ard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased, the appellees herein, in the sum of three hundred dollars, to be paid to the said appellees, their executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves, our executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the sixth day of February, 1879.

Whereas J. P. Giraud Foster and James Thomson, sought to be charged as garnishees herein, as appellants, have prosecuted an appeal to the Supreme Court of the United States out of the circuit court of the United States for the southern district of New York, in the second circuit, to reverse so much of the order, judgment, and decree made and entered in the above-entitled cause, under date of the twelfth day of October, 1878, and filed and entered in the office of the clerk of said circuit court on the 28th day of January, 1879, as orders, adjudges, and decrees that the decree or order of the district court of April 26th, 1873, adjudging that the proceeds of the steamer Wren, in the hands
713 of the garnishees, belonging to Laird, is not a final decree from which an appeal could be taken to the circuit court, and that the appeal of said garnishees, their first in order of time, in said cause, taken by them from said decree of April 26th, 1873, be, and the same is hereby, dismissed; and that the libellants and appellees recover from the said garnishees, J. P. Giraud Foster and James Thomson, their costs on said appeal to the circuit court, to be taxed, and as taxed amounting to the sum of one hundred and thirty-three dollars and sixty cents ($133.60), and that said libellants have execution therefor, unless an appeal be taken from this provision of the decree, after the entry thereof, within the time limited by law and the rules and practice of the court, so as to operate as a supersedeas:

Now, therefore, the condition of this obligation is such that if the above-named appellants, J. P. Giraud Foster and James Thomson, shall prosecute the said writ of appeal to effect, and shall answer and pay all costs and costs and interest on the said appeal, which shall be awarded against them if they fail to make their appeal good, or if so much of the said decree as is appealed from by said Foster &
714 Thomson be affirmed as to the said appellees, then the obligation to be void, otherwise to remain in full force and effect.

JAMES THOMSON.
J. P. GIRAUD FOSTER.
DAVID THOMSON.
A. L. PURVES.

Sealed and delivered in presence of—
WILLIAM W. PEARSON.

CITY & COUNTY OF NEW YORK, *ss:*

David Thomson, being duly sworn, deposes and says that he resides in the city of New York; that he is a freeholder, and is worth the sum of six hundred dollars over and above all his just debts and liabilities and property exempt by law from levy and sale under execution.

DAVID THOMSON.

Sworn to before me this 6th day of February, 1879.
[L. S.] WILLIAM W. PEARSON,
Notary Public, Kings Co., N. Y.

Certificate filed in city & co. of N. Y.

CITY & COUNTY OF NEW YORK, *ss:*

Allan L. Purves, being sworn, says that he is a resident and a freeholder within the State of New York, and is worth the sum of six hundred dollars over all his debts and liabilities which he owes, or
715 has incurred, and exclusive of property exempt by law from levy and sale under execution.

A. L. PURVES.

Sworn to before me this 6th day of February, 1879.
[L. S.] WILLIAM W. PEARSON,
Notary Public, Kings Co., N. Y.

Certificate filed in city & co. of N. Y.

I certify that on this 6th day of February, 1879, before me personally appeared J. P. Giraud Foster and James Thomson, David Thomson, and Allan L. Purves, to me known and known to me to be the individuals described in and who executed the foregoing undertaking, and severally acknowledged to me that they executed the same.
[L. S.] WILLIAM W. PEARSON,
Notary Public, Kings Co., N. Y.

Certificate filed in city & co. of N. Y.

The foregoing bond is approved as to form and amount and the sufficiency of the sureties.
February 6, 1879.

SAM'L BLATCHFORD,
Circuit Judge.

716 (Endorsed:) U. S. circuit court. John N. Cushing et al. vs. John Laird, the younger. Bond on appeal. Foster & Thomson, garnishees in pro. per. U. S. circuit court. Filed Feb. 6, 1879. John I. Davenport, clerk.

717 By the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York, second circuit.

To John N. Cushing and William Cushing in their own right and as executrix of Nicholas Johnson, deceased, and Mary A. Johnson, executrix of Henry Johnson, deceased, Keturah M. Pritchard, administratrix of Thomas Pritchard, jr., deceased, and Elizabeth H. Pritchard, executrix of William Pritchard, deceased:

Whereas J. P. Giraud Foster and James Thomson, charged as garnishees herein, have appealed to the Supreme Court of the United States from part of the order, judgment, and decree in the circuit court of the United States for the southern district of New York, second circuit, dated on the twelfth day of October, 1878, and filed and entered with the clerk of said court on the twenty-eighth day of January, 1879.

And the said J. P. Giraud Foster and James Thomson having filed the security required by law, you are hereby cited to be and ap-
718 pear before the Supreme Court of the United States, on the second Monday of October next, to do and receive what may pertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the sixth day of February, 1879, and of the Independence of the United States the one hundred and third.

SAM'L BLATCHFORD.

719 Circuit court of the United States for the southern district of New York.

JOHN N. CUSHING AND OTHERS
against
JOHN LAIRD, THE YOUNGER.

SOUTHERN DISTRICT OF NEW YORK,
City & County of New York, ss:

Gardner A. Reckard, being duly sworn, says that he is a clerk in the office of Foster & Thomson herein; that on the sixth day of February, 1879, at his office, No. 120 Broadway, in the city of New York, he served the foregoing citation on J. Langdon Ward, esq., proctor for the libellants herein, by giving a copy of said citation to and leaving it with the person in charge of said Ward's office, he being absent therefrom at the time, and at the same time showing said person the foregoing original citation; that deponent also left a copy of the said citation with a person of suitable age and discretion at the house of the said Ward, No. 15 West Washington Place, in the city of New York,
720 between the hours of 6 a. m. and 9 p. m., on the said 6th day of February, 1879, said Ward being absent from the said house, at the time, and at the same time showing said person the foregoing original citation.

GARDNER A. RECKARD.

Sworn to before me this 7th day of February, 1879.
[L. S.] DAVID THOMSON,
Notary Public (46), *New York County.*

(Endorsed:) U. S. circuit court. John N. Cushing et al. vs. John Laird, the younger. Citation. Foster & Thomson, garnishees in pro. per., 69 Wall st. Due service of a copy of within citation admitted this 6th day of February, 1879. U. S. circuit court. Filed Feb. 7, 1879. John I. Davenport, clerk.

721 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 720, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of John N. Cushing and William Cushing in their own right and as executors of Nicholas Johnson, deceased, and Mary A. Johnson, executrix of Henry Johnson, deceased, Keturah M. Pritchard, administratrix of Thomas Pritchard, d[illegible] deceased,

and Elizabeth H. Pritchard, executrix of William Pritchard, deceased, against John Laird, the younger, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be thereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 10th day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the said United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No. 388. J. P. Giraud Foster & James Thomson, garnishees, appellants, vs. John N. Cushing & William Cushing, in their own right and as executors of Nicholas Johnson, deceased, et al. S. New York. C. C. U. S. Filed 20th October, 1879.